

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

PAUL MITCHELL,

Plaintiff,

-v.-

Civil Action No.
9:05-cv-656 (GLS/RFT)

DALE ARTUS, Superintendent, Clinton
Correctional Facility

Defendant.

APPEARANCES:

OF COUNSEL:

FOR THE PLAINTIFF:

OFFICE OF RICHARD L. BAUMGARTEN
P.O. Box 242
Buffalo, New York 14201

RICHARD L. BAUMGARTEN,
ESQ.

GARY L. SHARPE,
U.S. DISTRICT JUDGE

ORDER

The above-captioned matter comes to this court following a Report-Recommendation by Magistrate Judge Randolph F. Treece, duly filed September 28, 2007. Following ten days from the service thereof, the Clerk has sent the file, including any and all objections filed by the parties herein.

No objections having been filed, and the court having reviewed the Magistrate Judge's Report-Recommendation for clear error, it is hereby

ORDERED, that the Report-Recommendation of Magistrate Judge Randolph F. Treece filed September 28, 2007 is ACCEPTED in its entirety for the reasons state therein, and it is further

ORDERED, that having received notice of a pending dismissal and failing to show good cause thereof, Plaintiff's complaint is dismissed, without prejudice, pursuant to Federal Rule of Civil Procedure 4(m) for failure to timely serve the defendant, and it is further

ORDERED, that the Clerk of the Court is to enter judgment in favor of the Defendant and close this case.

IT IS SO ORDERED

Dated: November 6, 2007
Albany, New York


Gary L. Sharpe
U.S. District Judge